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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,061	04/04/2005	John Sidney	2060.0330002/EKS/MM	7448
26111 7590 04/01/2009 STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005				
EXAMINER				
BRISTOL, LYNN ANNE				
ART UNIT		PAPER NUMBER		
1643				
MAIL DATE		DELIVERY MODE		
04/01/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,061

Applicant(s)

SIDNEY ET AL.

Examiner

Kriellion A. Sanders

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-10 and 13-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6-8, 13-33 is/are rejected.
- 7) ☒ Claim(s) 5, 9 and 10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6 13-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ficker, US Patent No. 4434264.

Ficker discloses polymer compositions comprising a blend of:

- (a) from about 80 to about 95 wt % of a random copolymer of propylene and ethylene containing from about 1 to about 6 wt % polymerized ethylene, and
- (b) from about 5 to about 20 wt % of a linear low density polyethylene copolymer of ethylene and at least one C4-C18 alpha olefin,

Wherein the random copolymer of propylene and ethylene, contains from about 1 to about 6 wt % polymerized ethylene, with a linear low density polyethylene in a weight ratio range between about 80:20 and about 95:5.

Patentee indicates that a clarifying and/or nucleating agents may be included in the resin blend for further improvement in clarity. Examples of clarifying and/or nucleating agents suitable for this purpose are salts of benzoic acid, e.g., sodium benzoate, dibenzylidene sorbitol and others. Usually the agents are added in quantities between about 0.1 and about 2 wt % based on the total polymer weight. Articles produced by blow molding are disclosed. See the abstract and col. 1, line 38 through col. 2, line 23.

Claims 1-4, 6 13-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kobayashi et al, US Patent No. 4532280.

Kobayashi et al discloses crystalline polyolefin-type resin compositions containing a **nucleating agent** which serves to improve the transparency, moldability and other properties of the resin. Representative examples of crystalline polyolefin-type resins of the invention include low density polyethylene (LDPE), medium density polyethylene (MDPE), high density polyethylene (HDPE), linear low density polyethylene (LLDPE) and similar polyethylene resins and polypropylene resins. The nucleating agents include a combination of a di(p-substituted benzylidene)sorbitol represented by the formula and an o-substituted benzylidene-p-substituted benzylidene sorbitol as defined in the claims. The total amount of the compounds of the formulae (I) and (II) range from 0.08 to about 1 part by weight per 100 parts by weight of the crystalline polyolefin-type resin. See claims 1-5.

Claims 1, 1-3, 8, 13, and 18-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McCullough et al, US Patent No. 6015854.

McCullough, Jr. et al discloses a propylene ethylene copolymer composition comprising clarifying and nucleating agents such as dibenzylidene sorbitol, salts of phosphorus or benzoic acid and also talc. See col. 1, line 50 through col. 3, lines 43-46. The compositions are used in making standard molded products. This would suggest the production of films and blow-molded articles. See col. 5, lines 7-37.

Claims 1, 2, 6, 7 and 13-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dotson, US Patent No. 6562890.

Dotson discloses polyolefin compositions comprising disodium hexahydrophthalate(HPHA) salts in combination with acid scavengers (such as organic calcium salts or dihydrotalcite complexes) to provide effective nucleating properties thereto. Polyolefins intended for use by McCullough et al include polyethylene, polypropylene, polybutylene, and any combination thereof. See the abstract and col. 1, lines 30-46). The compositions are used to produce films and blow-molded products. See col. 5, line 35 through col. 6, line 62.

Claims are rejected under 35 U.S.C. 102(b) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jones et al, US Patent No. 6599964.

Jones et al discloses polyolefin compositions comprising acetals and dibenzilidene sorbitol as nucleating agents in an amount of 0.1 to 2.0 % by weight. Suitable olefin polymers include polyethylenes and polypropylenes, including those of low density. Jones indicates that the compositions may be produced by combining nucleating agent with a first polyolefin followed by addition of this composition to a second polyolefin. Jones specifically states that polyethylene may be added to the polyolefin as a dispersion aid. See col. 5, lines 50-55 and col. 6, lines 29-41. The compositions are fabricated by blow molding to make films and molded articles. See col. 3, lines 3 through 62 and col. 4, line 67 through col.28, examples 1 and 2 and claims 11 and 12.

Rationale

The references described above indicate the state of the art at the time of applicant's invention. Each reference indicates a variety of nucleation agents that are recognized as being suitable for polyolefin compositions including polyethylene and polypropylene of varying densities. Therefore, the formulation of a composition comprising a low, medium or high density polyethylene and a nucleated polyolefin which further comprises a polymer other than but not prohibitive of polyethylene and a conventional nucleating agent is suggested by the prior art. If not fully anticipatory, the references clearly render such a composition as obvious.

2. Claims 5, 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kriellion A. Sanders whose telephone number is 571-272-1122. The examiner can normally be reached on Monday through Thursday 8:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kriellion A. Sanders/

Primary Examiner, Art Unit 1796

Kriellion A. Sanders
Primary Examiner
Art Unit 1796